

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 24th Floor
San Francisco, California 94105**

FINAL STATEMENT OF REASONS

November 12, 2009

REG-2008-00033

**REPEAL OF DISABILITY INCOME INSURANCE BENEFIT REDUCTION
REGULATIONS**

UPDATED INFORMATIVE DIGEST

There is no need to update any of the information contained in the Informative Digest for this matter.

UPDATE OF INFORMATION CONTAINED IN INITIAL STATEMENT OF REASONS

There is no need to update any of the information contained in the Initial Statement of Reasons for this matter.

**REASONABLE ALTERNATIVES TO REPEAL OF THE REGULATIONS; IMPACT ON
SMALL BUSINESS**

The Commissioner has identified no reasonable alternatives to the proposed repeal of the regulations, and none that would lessen any adverse economic impact on small businesses. The only alternatives suggested in public comments have been to retain the regulations as is, or even to expand the scope of the regulations so that they cover new matters. Neither of these alternatives would carry out the purpose for which repeal of the regulations is proposed or lessen any adverse economic impact on small businesses. The proposed repeal of the regulations will not affect small businesses. Insurance companies are not small businesses. California Government Code section 11342.610(b)(2).

UPDATE OF MATERIAL RELIED UPON

No material other than the public comments, the transcript of the public hearing, this Final Statement of Reasons, the executed Form 400, an updated Table of Contents, and the Certification of the rulemaking record has been added to the rulemaking file since the time the rulemaking record was opened, and no additional material has been relied upon.

IDENTIFICATION OF STUDIES

There are no technical, theoretical, and empirical studies, or similar documents relied upon in proposing the repeal of the regulations.

MANDATE UPON LOCAL AGENCIES AND SCHOOL DISTRICTS

The Department has determined that the repeal of the regulations will not impose a mandate upon local agencies or school districts.

ALTERNATIVES

The Commissioner has determined that there are no alternatives which would be more effective, or as effective and less burdensome to affected private persons, in carrying out the purpose for which the repeal is proposed than repeal of the proposed regulations. Public comments have suggested retaining the regulations as is or expanding them into new subject areas, but neither alternative would achieve the goal of eliminating the ambiguity and lack of certainty that has arisen as a result of having the regulations remain in effect.

ECONOMIC IMPACT ON BUSINESS AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE:

Repeal of the regulations is not expected to have an impact on the ability of California businesses to compete. The Department will continue to consider and enforce the law underlying the regulations in its review of policy forms and their provisions.

SUMMARY OF AND RESPONSE TO COMMENTS

Commenter	Synopsis or Verbatim Text of Comments	Response
	COMMENTS REGARDING REPEAL OF THE REGULATIONS (PUBLIC HEARING HELD JANUARY 8, 2009)	
<p>Letter dated January 8, 2009 from Marilyn Holle Senior Attorney, Disability Rights California</p>	<p>(1) Disability Rights California is a non-profit organization that protects the human and legal rights of persons with disabilities. It is the California agency designated under state 1 (fn 1: California Welfare & Institutions Code §§ 4900 through 4905.) and federal law ² (fn 2: Developmentally Disabled Assistance and Bill of Rights Act of 1978 (DD Act), 42 USC §§ 6000 <i>et seq.</i>; The Protection and Advocacy for Individuals with Mental Illness Act of 1986 (PAIMI Act), 42 USC §§ 10801 <i>et seq.</i>; The Protection and Advocacy of Individual Rights Act of 1992 (PAIR Act), 29 USC § 794e; The Technology Related Assistance for Individuals with Disabilities Act of 1988 (TRIAD) Act, 29 USC §§ 2201 <i>et seq.</i>; Protection and Advocacy for Beneficiaries of Social Security (PABSS), 42 USC § 1320b-21; Protection and Advocacy for Individuals with Traumatic Brain Injury (PATBI), 42 USC § 300d-51; Protection and Advocacy for Voting Access (PAVA), 42 USC §§ 15461-15462.) to represent the rights of persons with disabilities in California. Among the issues brought to our attention are those related to long-term disability policies and coordination with other benefits. For policies subject to the jurisdiction of the Department of Insurance, the regulations proposed for repeal set out important protections for consumers against overreaching by policy issuers in the area of coordination of benefits and offsets.</p>	<p>(1) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner agrees that the law which forms the basis for the regulations provides important protections for consumers. The Commissioner has the discretion to enforce existing law in various ways. The adoption of regulations is one way to enforce the law, but in this instance the Commissioner, in his discretion, may choose others, including the enforcement of existing law without adopting regulations.</p> <p>The Commissioner's experience in implementing and administering the regulations which form the subject of this proceeding has changed his view of the necessity for the regulations. In attempting to clarify which types of offsets are lawful, and in imposing restrictions on certain offsets, the regulations have actually created ambiguity in that they are the subject of litigation in which the legal and factual validity of the regulations (10 CCR sections 2232.45.1, 2232.45.2, 2232.45.3, 2232.45.4, and 2232.45.5) is being challenged (Sacramento Superior Court case number 34-2008-80000052). The litigation has affected the market situation for disability income insurance products because it has created questions concerning the lawfulness of offset restrictions which the Commissioner believes are lawful.</p>

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	<p>(2) For the reasons set forth below, we do not believe the Department of Insurance has set out sufficient reasons for repealing these important consumer protections. Among the purposes served by the regulations proposed for repeal is alerting consumers about offsets that policy issuers may not do. That notice feature will be frustrated by the proposed repeal.</p> <p>(3) Inadequacy of the Explanation of the Need for the Requested Repeal.</p> <p>This is what the Notice of Proposed Regulatory Action sets out as the reason under “Policy Statement Overview:</p> <p style="padding-left: 40px;">Since adoption of these sections earlier this year, the Commissioner has reevaluated the issue of offset clauses in the disability insurance market. Based upon this review, he has concluded that the issue is best addressed through enforcement proceedings pursuant to section 790.06 of the Insurance Code <i>when and if he discovers individual insurers employing illegal offset clauses in their disability insurance policies</i>. Any such enforcement action will be based upon existing state and federal statutory and common law, therefore regulations are not necessary and are being repealed.</p> <p>Emphasis added. The notice indicates that additional information about the reasons for the proposed repeal</p> <p style="text-align: right;">is available for inspection and copying by</p>	<p>In view of these changes, the Commissioner has reevaluated the market situation and has concluded that it is most advantageous to both consumers and the Department of Insurance if the regulations are repealed. This resolves the uncertainty in the marketplace created by the legal challenge. It also preserves agency resources for protecting consumers through form review and enforcement actions, instead of through protracted litigation.</p> <p>The Commissioner has not changed his view of the law which supports the regulations. The Commissioner is applying and enforcing this law in the Department’s review of form filings and will do so in any enforcement proceedings which may become necessary to ensure that disability income insurance policies issued or delivered in California are issued and administered in compliance with the law.</p> <p>(2) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1), above, into this response. The Commissioner will enforce existing law through form review, so that the policies and certificates of insurance received by consumers are reviewed for consistency with existing law regardless of whether the regulations are repealed. In this respect the policies and certificates will perform the notice function that is of concern to the commentator.</p> <p>(3) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response</p>

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	<p><i>prior appointment</i> at 45 Fremont Street, 24th Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.</p> <p>Emphasis added. The absence of information beyond the bare conclusionary information available on line prevents meaningful comment by consumers and those representing consumers who are not based in San Francisco. But even for those based in San Francisco, the information available for inspection should be made available on line so that there is the opportunity for meaningful comment – something that cannot happen absent some information. If the Department of Insurance continues to propose repeal, the Notice of Proposed Regulatory Action should be reissued once <i>all</i> the supporting information is available to consumers on line so that there is an opportunity for meaningful comment.</p> <p>(4) Repeal is Questioned in that the Commissioner’s Analysis Indicates Repeal may Adversely Impact Businesses.</p> <p>The Notice of Proposed Regulatory Action indicates that the proposed repeal</p> <p style="padding-left: 40px;">may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with business in other states.</p> <p>So why again is the Commissioner proposing the repeal of</p>	<p>number (1), above, into this response.</p> <p>The Commissioner complied with and exceeded the requirements of the Government Code concerning notice of the rulemaking proceeding and making the rulemaking file available to the public. The Commissioner’s Notice of Proposed Action contains a section titled “Website Postings” which sets forth instructions on how to access documents from the rulemaking file on the Department’s website. Copies of the Notice of Proposed Action, the Initial Statement of Reasons, and the Text of the proposed regulation repeal were posted on the Department of Insurance’s website on November 14, 2008, over 45 days before the public hearing. Copy services are available to copy documents such as those in the rulemaking file if someone does not want to travel to San Francisco to view the rulemaking file. Moreover, the Department of Insurance can make copies of documents for a small fee per page if requested to do so. The commentator did not ask the Department to make copies of documents during the public comment period.</p> <p>(4) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The quoted language in this comment is required by the Government Code if the state agency makes an initial determination that the action may have a significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. It is intended to encourage public comment on the issue. The same language was included in the Notice of Proposed Action for adoption of the regulations and was included for the same reasons.</p>

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	<p>these consumer protection regulations?</p> <p>(5) The Reasoning and Arguments Supporting the Amendment and Promulgation of the Regulations in REG-2006-00009 Also Set Out the Reasons why These Regulations Should Not be Repealed.</p> <p>We incorporate by reference the Final Statement of Reasons for Regulation Package REG-2006-00009 which is responsible for the final version of the regulations now proposed for repeal: http://www20.insurance.ca.gov/epubacc/REG/114669.htm. [Note from the Department of Insurance: this document is attached to this Final Statement of Reasons as Exhibit A]</p> <p>We support the testimony by Cassie Springer-Sullivan from July 10, 2007; the written comments and testimony by John Metz, Just Health, from July 10, 2007; written comments of James P. Keenley, April 23, 2008, and May 2, 2008. Their testimony in support of the regulations at issue here also set out compelling grounds for not repealing them.</p> <p>(6) Additional Reasons for Not Repealing the Consumer Protection Regulations</p> <p>Individuals with severe disabilities are helped in their attempts to return to work by California's 250% Working Disabled Medi-Cal Program. Calif. Welfare & Institutions Code § 14007.9. Under that program disability benefits, including Social Security Disability Insurance benefits and benefits from a long-term disability policy, are exempt for purposes of determining eligibility and the amount of the</p>	<p><i>See</i> Cal. Govt. Code section 11346.5(a)(7). The reasons for repealing the regulations are as set forth in this rulemaking package.</p> <p>(5) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1), above, into this response. Given the changed circumstances since the regulations were adopted, the Commissioner has concluded that it is preferable to enforce existing law as is, without the addition of the regulations.</p> <p>The Commissioner's view of the public comments referenced by the commentator in the Final Statement of Reasons for REG-2006-00009 is essentially the same, with the exception of his assessment of the necessity for the regulations, which has changed as set forth above, and as set forth in this Final Statement of Reasons. Several commentators propose expanding the regulations in a number of ways. However, given that the legal and factual validity of the regulations is presently being challenged in court, and given that the Commissioner wishes to resolve these issues without protracted litigation, the Commissioner declines to add more issues to the regulations by retaining them and expanding them in the ways proposed.</p> <p>With regard to comments concerning better disclosure of offsets as required by 10 CCR section 2536.2, the Commissioner does not propose repealing his amendments to 10 CCR section 2536.2, so these comments and the Commissioner's responses to them are</p>

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	<p>monthly premium. Retirement benefits, including those from an involuntary retirement addressed in Calif. Code Regs., tit. 10 § 2232.45.2, are not exempt. An insurer's attempt to coerce early retirement in order to offset disability benefits may also prevent or frustrate a person's attempt to return to work. The Medi-Cal program covers services often not available under Medicare and other health plans – i.e., attendant care through the IHSS program for persons who need assistance with daily living, personal care such as bathing and assistance with toileting, and medical procedures such as injections; incontinence supplies; durable medical equipment for mobility in the community; oxygen and ventilator equipment, maintenance and supplies; recovery model and peer support mental health services.</p> <p>The consumer protections in Calif. Code Regs., tit. 10 §§ 2232.45.3 and 2232.45.4, are important because of the existence of limited offsets from Title II Social Security Disability Insurance (SSDI) benefits by Workers Compensation benefits. 20 CFR § 404.408. Another reason for the protections afforded in those regulations is the risk to the consumer of double counting offsets.</p> <p>(7) Conclusion</p> <p>For the reasons set forth above, we do not believe the Commissioner has established that the consumer protection regulations proposed for repeal in fact should be repealed.</p>	<p>not relevant to this proceeding. In any event, the Commissioner's responses to comments on that section have not changed.</p> <p>Ms. Springer-Sullivan's concerns about certain policy provisions will be addressed in the form review process. With regard to good faith estimate of offsets for work performed, the contracts are governed by existing law setting forth good faith requirements.</p> <p>The problem which arose in the <i>Alloway</i> decision, cited by Mr. Keenley, can be addressed by requiring more specific policy language and, if necessary, enforcement proceedings targeted to specific issues and based on existing law.</p> <p>(6) No change. There is no need to amend the proposed rulemaking to accommodate this comment. This comment appears to assume that the Commissioner's position on the law underlying the regulations has changed. It has not. The Commissioner is continuing to enforce the law which forms the basis for the regulations. The Commissioner incorporates by reference his response number (1), above, into this response.</p> <p>(7) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The reasons for the Commissioner's repeal of the regulations are set forth above in the Commissioner's response number (1), above, which the Commissioner incorporates herein by reference.</p>

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<p>1/8/09 hearing transcript: James Keenley, attorney with Lewis, Feinberg, Lee, Renaker & Jackson</p>	<p>(1) MR. KEENEY: Thank you. So, once again, my name is James Keeney. I'm an attorney at Lewis, Feinberg, Lee, Renaker & Jackson. We represent employees, broadly speaking, in ERISA matters and in other public matters. I want to thank the Department for giving us the opportunity to speak today. We also intend to submit written comments, so I will keep my comments brief, but I did want to urge the Department to extend the comment period, because I know several people were working on these matters, but because most of the comment period was during the holidays, people are just sort of getting to it at the last minute. I know I personally would like to research some additional issues; nonetheless, we will submit written comments today.</p> <p>(2) I'm here today because we strongly disagree with the proposed repeal. We commented in support of these regulations when they were initially adopted last year, and we believe these regulations serve an important public purpose in various ways that I will only briefly touch on here because we'll comment on them further in our written comments, but I did want to point out a couple things.</p> <p>First, the rationale for repealing the regulations that these matters can be dealt with through individual enforcement actions -- I'm not sure how correct that is. One concern I have is that existing federal law, at least, on these questions that are addressed by some of these regulations is a little bit thin and it's not clear what all areas are covered, and I think the regulations provide some important clarity</p>	<p>(1) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Department of Insurance took the holiday period into consideration when it issued the notice of hearing for the regulations, giving the public 56 days to comment rather than the required 45 days. Given that the Department had already provided the public with 11 additional days to comment on the regulation repeal, it declined to extend the public comment period further.</p> <p>(2) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner's overall view of the law concerning offsets and involuntary retirement, permanent disability workers' compensation benefits, estimates of temporary workers' compensation benefits, and social security has not changed. However, the Commissioner's experience in administering the regulations which form the subject of this proceeding has changed his view of the necessity for the regulations. The Commissioner incorporates by reference his response number (1) to the comments of Disability Rights California, above, into this response.</p> <p>The problem which arose in the <i>Alloway</i> decision, cited by Mr. Keenley, can be addressed by requiring more specific policy language and, if necessary, enforcement proceedings targeted to specific issues and based on existing law.</p> <p>(3) No change. There is no need to amend the proposed</p>

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	<p>as to what California will allow in long term disability insurance policies.</p> <p>In particular, the regulations that pertain to involuntary retirement I think are very important, because the leading case law on that subject, which is the <i>Kalvinskas v. California Institute of Technology</i> case, which is cited in the notice, is a more limited holding than I think maybe the notice appreciates. The <i>Kalvinskas</i> case did hold that it is illegal under the age discrimination and employee benefits laws to force an employee to take involuntary early retirement, and it did in that case, in fact, prevent a long term disability insurer from enforcing the policy term that would have caused that to happen. But the problem is the <i>Kalvinskas</i> court limited its holding to situations where the long term disability policy was completely and fully offset by the involuntary retirement that the employee was being forced to take.</p> <p>And while that's definitely a serious situation -- and I'm glad that the Ninth Circuit reached that holding -- it doesn't cover a broad range of potential early retirement offsets that would be harmful to employees. Essentially, involuntary early retirement forces employees to choose between substantially reduced income while they're disabled -- potentially devastatingly reduced income -- or potentially reduced income when they retire because of having to dip into their retirement assets prematurely. It's not good for the retirement system and it's not good for the disability insurance system either, it's our belief.</p> <p>The other area we strongly supported the initial regulation on was on the move to ban offset clauses that purport to</p>	<p>rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1) to the comments of Disability Rights California, above, into this response. The commentator asks the Commissioner to expand the scope of the regulations being repealed. However, given that the legal and factual validity of the regulations is presently being challenged in court, and given that the Commissioner wishes to resolve these issues without protracted litigation, the Commissioner declines to add more issues to the regulations by retaining them and expanding them in the ways proposed. In addition, no legal authority is provided which would support the requested expansion of the regulations.</p> <p>(4) No change. There is no need to amend the proposed rulemaking to accommodate this comment for the reasons set forth in response (3) above.</p>

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	<p>entitle the insurer to take out an offset for permanent disability benefits under the Workers' Compensation system. This is another issue that has been recently addressed in the federal court in a case called Alloway versus Reliastar Life, and in that case the court held that an LTD insurer could not take an offset for permanent disability benefits that the disabled employee was receiving. But its holding was also extremely limited.</p> <p>The Alloway court had to overcome several doctrines under ERISA that grant deference to plan administrators to interpret their own policies, and the court was only able to do that because the policy in this case was ambiguous; it only listed Workers' Compensation benefits generally and under a sort of header term called "Other Income," and it didn't specify that permanent disability benefits were part of what they would offset.</p> <p>But our understanding of the Alloway holding is that at least under ERISA, a court confronted with policy language that said specifically, "We will offset permanent disability Workers' Compensation benefits" -- would be enforced, and that is not a good thing, we think, because permanent disability benefits under the Workers' Compensation system insure a different risk than do LTD insurers. Permanent disability is about compensating employees for the residual effects of the workplace injury. It's a replacement for tort in pain-and-suffering type of damages. But LTD insurance is a lost income replacement, and lost income is handled in the Workers' Compensation system under the temporary disability benefit.</p>	

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	<p>We also, in that same vein, supported the regulations to ban offset clauses that force employees -- that allow for estimation of temporary disability benefits under the Workers' Comp system, principally because we think that if insurers are taking estimates of temporary disability benefits, they're essentially forcing employees to file Workers' Comp claims and those Workers' Comp claims may not necessarily be meritorious. So the system is overburdened as it is. It takes years to resolve these claims.</p> <p>It's also a problem with the Social Security system. The insurers are all the time forcing people to apply for Social Security Disability under claims that are very dubious under Social Security standards and it backlogs the Social Security system. In fact, there are several lawsuits pending right now that are charging major insurers with defrauding the government with these systems, which have been met with mixed success.</p> <p>(3) Another issue I would like to comment on would be in addition to not repealing these regulations, we think that they should, in fact, be expanded. There is strong federal policy, at least, in support of protecting worker retirement benefits from alienation, and unfortunately, those rules do not extend under the current federal law to protecting workers from a situation where their retirement benefits are being deducted from their LTD insurance. We believe it's within the Insurance Commissioner's power to regulate the practice of taking any retirement offsets whatsoever out of long term disability insurance policies that are subject to the Commissioner's approval; and we believe that that would be a beneficial policy for California workers for the</p>	

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	<p>same reasons that we believe it's wrong to enforce involuntary retirement. Essentially, that if an LTD insurer is going to insure someone for a period of time that they're also eligible for their retirement benefits, those are entirely different benefits; they insure different risks; and the LTD insurer should not be off-loading the risk of disability onto the retirement system.</p> <p>(4) We also want to encourage the Commissioner to look at the issue of offsets for dependent Social Security disability benefits. This is not an issue that was addressed by the initial regulations, but it is in the same suite of issues, which is that these regulations seem to be targeted in part, specifically in terms of disability, to preventing offset to benefits that insure this risk. And Social Security insures a different risk than does long term disability insurance. Those dependent benefits are specifically intended for the children of disabled people, and there's a legal requirement that the recipient of the benefits, the parents, spend those benefits for the benefit of the child. They were designed to cover things like special transportation costs that the children of disabled people might need. Nonetheless, many LTD policies purport to offset dependent Social Security benefits. And in our experience, we have never seen an LTD policy that includes a parallel special benefit for the dependent children of disabled policyholders.</p> <p>That is all I have for my comments, for my verbal comments today, and I thank you once again for the opportunity to present them, and I will also be submitting written comments later today.</p>	
	[A copy of the January 8, 2009 letter is attached to this	(1) No change. There is no need to amend the proposed

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<p>Letter dated January 8, 2009 from James Keenley, attorney with Lewis, Feinberg, Lee, Renaker & Jackson</p>	<p>Final Statement of Reasons as Exhibit B. The Commissioner has inserted numbers next to the comments. The numbers correspond with the Commissioner's responses to the comments in this Final Statement of Reasons.]</p>	<p>rulemaking to accommodate this comment. The Commissioner disagrees that the repeal of the regulations lacks legal merit and is poor public policy. The Commissioner's overall view of the law concerning offsets has not changed. However, the Commissioner's experience in administering the regulations which form the subject of this proceeding has changed his view of the necessity for the regulations. The Commissioner incorporates by reference his response number (1) to the Comments of Disability Rights California, above, into this response.</p> <p>(2) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The comment assumes that the Commissioner's position on the law underlying the regulations has changed. The Commissioner has not changed his overall view of the law supporting the regulations or the public comments submitted by the commentator in the proceeding to adopt the regulations (REG-2006-00009). However, the Commissioner's experience in administering the regulations which are the subject of the proposed repeal has changed his view of the necessity for the regulations. The Commissioner incorporates by reference his response number (1) to the Comments of Disability Rights California, above, into this response.</p> <p>With regard to comments concerning better disclosure of offsets as required by 10 CCR section 2536.2, the Commissioner does not propose repealing his amendments to 10 CCR section 2536.2, so these comments and the Commissioner's responses to them are not relevant to this proceeding. In any event, the</p>

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		<p>Commissioner's responses to comments on that section have not changed.</p> <p>The problem which arose in the <i>Alloway</i> decision, discussed in Mr. Keenley's comments, can be addressed by requiring more specific policy language and, if necessary, enforcement proceedings targeted to specific issues and based on existing law. The Commissioner is not required to proceed by way of regulations but rather has the discretion to decide how to enforce applicable law.</p> <p>(3) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (2), above, into this response.</p> <p>The Commissioner regulates disability income insurance policies in accordance with existing law, which includes case law as well as statutes. In addition, the fact that the Notice of Proposed Action fails to cite any federal statutes as authority for the regulations is of no consequence. The Commissioner's rulemaking authority is granted to him by the Insurance Code, not by federal law.</p> <p>The commentator states that there is a lack of clear case law on certain offset issues addressed by the regulations, and that this is a reason why the regulations should remain in effect. The Commissioner disagrees, especially in view of the impact that the regulations have had on the market situation for disability income products in terms of triggering litigation. The regulations have not had the effect of clarifying existing law, as the Commissioner intended.</p>

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		<p>The Commissioner notes that the law cited as reference authority for the regulations provides legal authority for his positions.</p> <p>(4) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner disagrees with the commentator's criticisms of enforcement proceedings. Moreover, enforcement actions are often based on information gathered by the Department of Insurance as opposed to information brought to the agency by consumers. The Commissioner incorporates by reference his responses number (1)-(3), above, into this response.</p>
<p>Letter dated March 11, 2009 from James Keenley, attorney with Lewis, Feinberg, Lee, Renaker & Jackson [the letter is summarized]</p>	<p>Mr. Keenley states the following in his letter: He urges the Commissioner to reconsider repeal of the regulations in view of the March 11, 2009 decision in <i>Carden v. Aetna Life Ins. Co.</i>, Fourth Circuit Court of Appeals case no. 6:05-cv-02053-RBH, which he says directly contradicts the Commissioner's rationale for repealing the regulations, i.e., that existing federal and state law already prohibit the practices prohibited by the regulations, rendering the regulations superfluous. The court in the <i>Carden</i> case held that plan language entitling the insurer to offset permanent disability benefits from long-term disability benefits was valid and enforceable under ERISA. Mr. Keenley says the regulations to be repealed state that disability insurance policies in California may not contain provisions which offset permanent disability benefits. Mr. Keenley says that the <i>Carden</i> case contradicts the Commissioner's claim that existing federal and state law already prohibits this practice, rendering the regulations superfluous.</p>	<p>(1) No change. There is no need to amend the proposed rulemaking to accommodate this comment. This comment was received by the Commissioner more than two months after January 8, 2009, the date the public comment period closed. It would be unfair to other members of the public to accept a public comment from one party filed so long after the close of the public comment period.</p> <p>Even if the Commissioner were to accept this comment, the substance of the comment does not support a change to the rulemaking proceeding. The comment concerns a Fourth Circuit Court of Appeals case interpreting an insurance policy which provided coverage to an individual residing outside of California. The case does not cite to or apply California law. The policy in question does not appear to be governed by California law.</p>

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	<p>Mr. Keenley's letter goes on to summarize the facts of the <i>Carden</i> case, which he says is exactly the kind of situation that is addressed by the Commissioner's regulation concerning offset of permanent workers' compensation benefits, and that sound public policy supports keeping the regulation in effect. A copy of the <i>Carden</i> decision is attached to the letter.</p>	<p>In contrast, group disability income insurance policies subject to approval under the California Insurance Code are subject to California law, and the Commissioner may review them for consistency with the authorities cited in support of the regulations. Pursuant to the authorities cited in support of regulation section 2232.45.4, offsets for workers' compensation permanent disability benefits are not permitted in group disability income insurance policies subject to approval under the California Insurance Code.</p>
<p>Text of 1/8/09 hearing transcript: John Metz, chairman and executive director of Just Health, a nonprofit public benefit corporation.</p>	<p>(1) MR. METZ: You're welcome. First of all, thank you for having us here and giving me the opportunity to comment. I, too, would like to suggest that the comment period be extended to allow further research and work to be done to provide comments that would be helpful to you in making your final decision.</p> <p>(2) I would like to be sure that the comments, the written comments that I submitted -- I believe it was July 10th, 1997 (sic) -- relating to the original regulations be included in this hearing process or this regulatory process. I believe that the comments in those comments are applicable to what's proposed here.</p> <p>I have a question. Would that be adequate, or do I need to send you another copy of the same comments in order to have them in the record here?</p> <p>HEARING OFFICER HOM: You need to submit -- if they're your written comments, I think you need to send them to us. You can do that by e-mail.</p> <p>MR. METZ: Yes, I would. I know it's already in the regulatory record to the initial one. But do you need</p>	<p>(1) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Department took the holiday period into consideration when it issued the notice of hearing for the regulations, giving the public 56 days to comment rather than the required 45 days. Given that the Department already provided the public with 11 additional days to comment on the regulation repeal, it declined to extend the public comment period further.</p> <p>(2) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The written comments dated July 10, 2007 were provided by Mr. Metz and have been included in the record of this proceeding. However, Mr. Metz did not include any of the exhibits to his comments in his filing -- those documents were not filed and therefore are not included in the rulemaking record.</p> <p>(3) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response</p>

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	<p>another copy?</p> <p>HEARING OFFICER HOM: Yes, I think you do the selection process of choosing what you want to include and then put it in this record.</p> <p>(3) MR. METZ: Okay. Let's see. One of the benefits of these proposed regulations is that they make clear an already uninformed public -- more clear -- what their rights and benefits are.</p> <p>MS. DAVENPORT: Let me interrupt you for a second, Mr. Metz. You're talking about one of the benefits of the proposed regulations, proposed regulations of the repeal?</p> <p>MR. METZ: Forgive me. The regulations that you are planning to repeal.</p> <p>One of the advantages of those regulations is that an ordinary person -- and I believe that they are truly the targets of all of these regulations -- the purpose is to protect the interests of the insurance consumers who are affected by these practices. By having these regulations in effect, an ordinary person stands some greater chance of understanding what their rights and benefits are. The proposed reason for repealing it is that any such enforcement action will be based upon existing state and federal statutory and common law.</p> <p>Just Health deals with consumers. We have done this for almost fifteen years now; we do it on a daily basis. And I have yet, in all of my years, to meet a single consumer who could understand or who knows about these federal and state statutory and common law rules that you're talking about. The vast majority of consumers, in my experience, accept what they are told by their insurers without comment or action. I believe studies have actually been</p>	<p>number (2) to Disability Rights California, above, into this response.</p> <p>Repeal of the regulations does not deprive the Commissioner of his form review or enforcement action authority. Form review is an effective way to protect consumers because it allows the Commissioner to review the terms of policy forms or certificates of coverage forms that insurers provide to consumers. The Commissioner can enforce the body of law which forms the basis for the regulations through the form review process. The Commissioner can disapprove forms which contain unlawful provisions, and disapproved forms may not be issued or delivered to consumers in the State of California. In addition, if an insurer is administering its policies in a way that ignores the law underlying the regulations, the Commissioner may bring an enforcement action against the insurer to require it to administer its policies in accordance with existing law.</p> <p>(4) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (3), above, into this response.</p> <p>(5) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1) to the comments of Disability Rights California, above, into this response.</p> <p>The commentator asks the Commissioner to expand the scope of the regulations being repealed. However, given</p>

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	<p>done to show that that is in fact the case in, I believe, 90 percent or more of the situations. Therefore, even if there are statutory protections for consumers, if they don't understand them, it provides an enormous, almost insurmountable barrier to them to have those rights enforced.</p> <p>And the problems, of course, are compounded because these are the people who are disabled, so they have major problems in being aware of, understanding and taking action with regard to their rights. Even if they had a complete understanding, to take away the clarity that these regulations, the previous regulations, provide I believe to a virtual certainty will cause a great many sick and disabled Californians to lose benefits which they are legitimately entitled to. And you, the Department, will never hear about them, because they will never get to the point where they will bring complaints to you. We see this happening time and time and time and time again. So we hear things that you never hear.</p> <p>(4) Another problem with the repeal of these regulations is that in our observation, the violations are so widespread in the industry now, that the notion that the Department will be able to put forth an end to these practices by bringing individual actions -- there's no foundation that I'm aware of, no evidence in the twenty-five years or so that I've been doing this, that such individual actions will ever bring the kinds of changes I believe the Department wants to see, which is that these illegal provisions are not inappropriately applied.</p> <p>(5) We, too, would like to see the regulations that are</p>	<p>that the legal and factual validity of the regulations is presently being challenged in court, and given that the Commissioner wishes to resolve these issues without protracted litigation, the Commissioner declines to add more issues to the regulations by retaining them and expanding them in the ways proposed. Moreover, no legal authority is provided which would support the requested expansion of the regulations.</p> <p>In addition, this comment concerns an expansion of the regulations to modify form approval procedures which are set forth in the Insurance Code. The Insurance Code sets forth the procedure for form review, and it does not provide for public hearings or public comment periods as part of the form review process. As a matter of law, the statutes in the Insurance Code cannot be amended or repealed by regulation. Insurance Code section 10291.5 speaks for itself.</p> <p>As noted above, the Department declined to extend the public comment further because at the time of the hearing it had already provided the public with 11 additional days to comment on the regulation repeal.</p> <p>(6) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1) to the Comments of Disability Rights California, above, into this response.</p>

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	<p>proposed to be repealed, instead of being repealed, to be expanded, so consumers can have greater clarity about the full extent of their rights, and the Department can also have a greater ability, with greater clarity itself, to appropriately enforce the law.</p> <p>Another part of this is that -- an example of the kind of expansion that I think might be quite helpful is that I've discovered that although it's apparent that many of the provisions in these policies that are being addressed appear to be in violation of 10-291.5 of the Insurance Code -- that is, that they are provisions which are at least uncertain, ambiguous, difficult to understand, and likely to mislead people to whom the policies are given -- the current procedure the Department uses is that it will not release proposed policy documents to the public beforehand in order for the public to be able to comment and suggest to the Department that there are violations of, for example, 10-291.5. As a consequence, in our experience -- and I submitted examples to the Department -- there are numerous policies in existence in California right now that violate, apparently, 10-291.5. And the standard shifts; the standard for repeal is different than the standard for prohibiting their approval in the first place.</p> <p>I believe 10-291.5 prohibits the Commissioner from approving such policies, where once they're approved, then it becomes discretionary for the Commissioner to withdraw approval. We believe that there are many policies out there right now that should never have been approved in the first place, but since consumers have no ability to see these policies and suggest to the Department -- point out the specific language that violates the statute, the practical</p>	

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	<p>effect of that statute is greatly diminished for the consumers.</p> <p>Those are all the comments I'd like to make. Now again, I thank you for having these hearings, and I hope that you extend the deadline so we can have another shot at this.</p> <p>(6) I think that if you were to repeal these regulations, a great many Californians are going to be harmed. Thank you.</p>	
<p>John Metz, chairman and executive director of Just Health, a nonprofit public benefit corporation. Text of written comments filed on 1/8/09 is summarized. These same comments were filed in support of adoption of the regulations on July 10, 2007.</p>	<p>Summary of written comments filed on 1/08/09:</p> <p>(1) Pages 1- 3: At a pre-notice public discussion on 10/30/06 about the proposed "Offset" regulations, California Department of Insurance General Counsel Gary Cohen stated that based on the information then in the Department's possession relating to the application "offset" provisions, the Department was unable to determine whether these policies provided any economic benefit - Mr. Metz had the same problem. Mr. Metz cites an article published on a California Healthline website concerning how many millions of Californians have disability income insurance coverage. [Mr. Metz did not include a copy of the article in the rulemaking record.]</p> <p>(2) Pages 3-8: On October 30, 2006 the Department asked the industry representatives to provide more information about the economic benefit of these policies. The Department sent a letter dated November 29, 2006 to the Association of California Life & Health Insurance Companies ("ACLHIC"), an industry trade group, requesting more information about the economic benefit of the policies. ACLHIC responded by letter dated February</p>	<p>(1) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1) to the Comments of Disability Rights California, above, into this response. In addition, the comment does not address the regulations or the repeal of the regulations with any particularity, and it does not comment on the rulemaking procedures followed. There is no need to amend the proposed rulemaking to accommodate this comment.</p> <p>(2) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1), above, into this response.</p> <p>(3) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1) to the Comments of Disability Rights California, above, into this response.</p> <p>(4) No change. There is no need to amend the proposed</p>

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	<p>28, 2007. Mr. Metz criticizes ACLHIC’s response as factually unsupported and nonresponsive to the questions posed by the Department of Insurance. Mr. Metz says that this illustrates how unclear the economic benefit of these policies is. The two letters are referenced as Exhibits A and B to Mr. Metz’s comments. [Note: Mr. Metz did not attach Exhibits A or B to his comments or file these documents in this rulemaking proceeding.]</p> <p>(3) Page 6: The practices which are barred by the substance of the Department’s regulations (sections 2232.45.2, 2232.45.3, 2232.45.4, and 2232.45.5) “violates, or is prone to violate, existing law.”</p> <p>(4) Page 9: If the Department doesn’t have this information, and agents and brokers don’t have this information or don’t disclose it, how can consumers determine whether the policy has any economic benefit?</p> <p>(5) Pages 9-16: Mr. Metz discusses the market conduct/claims handling problems of UNUMProvident insurers, “the nation’s largest disability insurer,” the Department’s and other states’ enforcement actions against UNUMProvident companies, the resulting settlement agreements, and UNUMProvident companies’ claims handling practices. Unless all of this information is disclosed to the consumer, consumers can’t make a rational informed decision about buying the coverage, and the true meaning of the offset provisions is unintelligible, ambiguous, abstruse, or likely to mislead.</p> <p>(6) Pages 16-17: Because agents, brokers, and consultants earn their fees from insurers, without regard for what is</p>	<p>rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (1), above, into this response.</p> <p>The Commissioner notes that 10 CCR section 2536.2 as amended is not being repealed. Section 2536.2 informs consumers of the effect of offsets on benefits by setting forth an offset example.</p> <p>To the extent this comment is a request to expand the scope of the regulations, the Commissioner declines to do so. Given that the legal and factual validity of the regulations is presently being challenged in court, and given that the Commissioner wishes to resolve these issues without protracted litigation, the Commissioner declines to add more issues to the regulations by retaining them and expanding them.</p> <p>(5) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response.</p> <p>(6) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response.</p> <p>(7) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response.</p>

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	<p>best for the customer, the regulations must contain provisions mandating that any licensee who advertises, markets, or sells group disability insurance policies fully disclose the effect of each offset.</p> <p>(7) Pages 17-19: Mr. Metz gives examples as to why consumers need better disclosure of the effect of offsets. He cites CIC sections 330, 332, 334, 360, and 790.03(a) as support for requiring more disclosure.</p> <p>(8) Page 19: Insurers require disclosure of material facts from consumers. Consumers are entitled to disclosure of material facts from insurers.</p> <p>(9) Pages 20-21: Adequate disclosure of offsets is important at all stages of the insurer-insured relationship, from advertising a policy to events following the handling of a claim. Consumers are likely to be misled without full disclosure of the effect of offsets. If the true effect of offsets were fully disclosed to consumers, the consumer might either not buy the coverage or pay substantially less for it.</p> <p>(10) Pages 21-22: Mr. Metz discusses a treatise by Richard E. Stewart and Barbara D. Stewart titled, "The Loss of the Certainty Effect," a copy of which is referenced as Exhibit C but is not attached to or otherwise included with his written comments. [Note: Note: Mr. Metz did not attach Exhibit C to his comments or file it in this rulemaking proceeding.] This treatise explains how the certainty of claims payment is the central factor in determining whether an insurer can sell its product and for how much. Mr. Metz also cites an article by Arnold J.</p>	<p>(8) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response.</p> <p>(9) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response.</p> <p>(10) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response.</p> <p>(11) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response.</p> <p>(12) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response. The Commissioner declines to expand the scope of the regulations generally, or to include the statutes and regulations cited (Insurance Code sections 790.02 and 790.03 are already cited in the regulations.).</p> <p>(13) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response. Moreover, the</p>

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	<p>Rostoff, professor at University of Pennsylvania, concerning how consumers are unhappy with insurance coverage. [Mr. Metz did not attach a copy of Professor Rostoff's article to his public comments or otherwise file it in this rulemaking proceeding.] These articles support fuller disclosure of offset provisions.</p> <p>(11) Pages 23-24: People buy disability income coverage to protect themselves, and they discover at their weakest moment, when they are disabled, that they have been betrayed or cheated by misleading or undisclosed offsets in their policies.</p> <p>(12) Pages 24-26: Under CIC 10291.5(b)(13) and 10291.5(f) the Commissioner can disapprove or withdraw approval of disability policies that do not comply with the law. Undisclosed, inadequately disclosed, or illegal offsets violate CIC sections 330, 332, 790.02, 790.03(a), 790.03(b), 790.03(h), and CCR title 10 section 2695.1 et seq. Group disability policies and certificates must be approved by the Department for sale in California. CIC section 42; 10 CCR section 2695.2(j).</p> <p>(13) Pages 26-27: It is urged that offset provisions violate Business and Professions Code sections 17200 et seq. and 17500 et seq. and Civil Code sections 1770(a)(5),(7),(9),(14),(16),(17) and/or (19), and that these sections provide adequate grounds for the Commissioner's regulations and for the withdrawal of approval of policies containing undisclosed, inadequately disclosed, or illegal offsets.</p> <p>(14) Pages 27-28: The proposed regulations must ensure</p>	<p>Insurance Commissioner is not enforcing the Business and Professions Code or the Civil Code. He is enforcing the Insurance Code.</p> <p>(14) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response. The Commissioner has authority to adopt the regulations, but he need not adopt regulations in order to implement the statutes cited in this comment. The Insurance Code does not create a mandatory duty to promulgate or adopt the regulations in question.</p> <p>(15) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response. The Commissioner has authority to adopt the regulations, but he need not adopt regulations in order to implement the statutes cited in this comment. The Insurance Code sections cited in this comment do not create a mandatory duty to promulgate or adopt the regulations in question.</p> <p>(16) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response. The Commissioner cited adequate authority to support adoption of the regulations in question, but for the reasons stated above, the regulations are being repealed. It is therefore unnecessary to address the merits of all of the citations contained in this comment.</p>

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	<p>that unlawful offsets are eliminated and prohibited; that there is full disclosure of all material information to consumer, enabling them to make an informed decision regarding which policy, if any, to buy; and that the Commissioner fulfills his statutorily mandated duty to enforce the Insurance Code. The regulations will go a long way towards preventing undisclosed, inadequately disclosed, or illegal offsets. It will allow the “magic of the marketplace” to provide the best value for consumers.</p> <p>(15) Pages 28-29: It is the Commissioner’s right and duty to solve the problems addressed by the regulations. The Insurance Code provides that the conduct which the proposed regulations address shall not be permitted in California. E.g., CIC 10291.5(a)(1)and (2); CIC 10291.5(b)(1) and (7)(A), and (13). Insurance Code sections 12921(a) and 12926 provide that the Commissioner “shall” perform his duties, “shall” enforce the law, and “shall” require full compliance from insurers with all provisions if the Insurance Code.</p> <p>(16) Page 30: The Commissioner has authority to adopt the proposed regulations (case citations omitted in this summary). The Commissioner’s regulatory authority over disability income insurance derives from Insurance Code sections 790.10, 330, 332, 780, 781, 790, 790.01, 790.02, 790.03, 790.036, 12921, and 12926.</p> <p>(17) Page 31: The commentator references Exhibit D, which is described as a tracked, edited version of a portion of the Department’s Notice of Proposed Action with suggested changes regarding the effect the regulations will have on businesses, the ability of California businesses to</p>	<p>(17) No change. The comments on page 31 reference exhibits D and E, which Mr. Metz did not file in this rulemaking proceeding. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response.</p> <p>(18) No change. There is no need to amend the proposed rulemaking to accommodate this comment. The Commissioner incorporates by reference his response number (4), above, into this response. The Commissioner agrees that there is ample authority for the regulations. However, the Insurance Code does not create a mandatory duty to promulgate or adopt the regulations in question.</p>

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	<p>compete, and the potential cost impact on consumers and businesses. [Note: Mr. Metz did not attach Exhibit D to his comments or file it in this rulemaking proceeding.]</p> <p>The commentator also references Exhibit E, a tracked, edited version of the regulations with proposed changes. [Note: Mr. Metz did not attach Exhibit E to his comments or file it in this rulemaking proceeding.] .</p> <p>(18) Page 31. It is the Commissioner's right and duty to solve the problems addressed by the proposed regulations. There is ample statutory and case law authority for the Commissioner to do so.</p>	
<p>Ted M. Angelo Legislative and Regulatory Counsel, ACLHIC; John Mangan, Regional Vice President, Pacific Region ACLI, letter dated January 8, 2009. .</p>	<p>[A copy of the January 8, 2009 letter is attached to this Final Statement of Reasons as Exhibit C. The Commissioner has inserted a number next to the comments. The number corresponds to the number of the Commissioner's response to the comments in this Final Statement of Reasons.]</p>	<p>(1) No change. There is no need to amend the proposed rulemaking to accommodate the comments set forth in the January 8, 2009 letter or the two letters attached, which together comprise Exhibit C to this Final Statement of Reasons. The Commissioner disagrees with the commentator's claim that the Commissioner lacks authority to promulgate the regulations. Nothing in Insurance Code section 790.10, 790.03, or any other section of the Insurance Code restricts the Commissioner's rulemaking authority in the manner described by the commentator. There is ample legal authority for the regulations, as the Commissioner demonstrated in his responses to ACLHIC's and ACLI's comments in the Final Statement of Reasons for rulemaking proceeding REG-2006-00009.</p> <p>The law which forms the basis for the regulations provides important protections for consumers. The Commissioner has the discretion to enforce existing law in various ways. The adoption of regulations is one way</p>

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		<p>to enforce the law, but in this instance the Commissioner, in his discretion, may choose others, including the enforcement of existing law without adopting regulations.</p> <p>The Commissioner's experience in implementing and administering the regulations which form the subject of this proceeding has changed his view of the necessity for the regulations. In attempting to clarify which types of offsets are lawful, and in imposing restrictions on certain offsets, the regulations have actually created ambiguity in that they are the subject of litigation in which the legal and factual validity of the regulations (10 CCR sections 2232.45.1, 2232.45.2, 2232.45.3, 2232.45.4, and 2232.45.5) is being challenged (Sacramento Superior Court case number 34-2008-80000052). The litigation has affected the market situation for disability income insurance products because it has created questions concerning the lawfulness of offset restrictions which the Commissioner believes are lawful.</p> <p>In view of these changes, the Commissioner has reevaluated the market situation and has concluded that it is most advantageous to both consumers and the Department of Insurance if the regulations are repealed. This resolves the uncertainty in the marketplace created by the legal challenge. It also preserves agency resources for protecting consumers through form review and enforcement actions, instead of through protracted litigation.</p> <p>The Commissioner has not changed his view of the law which supports the regulations. With the exception of his</p>

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		<p>changed view of the necessity for the regulations, the Commissioner's responses to the public comments in Exhibit C remain as set forth in the Final Statement of Reasons for rulemaking proceeding REG-2006-00009. The Commissioner is applying and enforcing existing law in the Department's review of form filings and will do so in any enforcement proceedings which may become necessary to ensure that disability income insurance policies issued or delivered in California are issued and administered in compliance with the law. Given the changed circumstances since the regulations were adopted, the Commissioner has concluded that it is preferable to enforce existing law as is, without the addition of the regulations.</p> <p>With regard to comments concerning better disclosure of offsets as required by 10 CCR section 2536.2, the Commissioner does not propose repealing his amendments to 10 CCR section 2536.2, so the comments which concern this section, and the Commissioner's responses to them, are not relevant to this proceeding. In any event, the Commissioner's responses to comments on that section have not changed.</p>